

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

-8-

VS.

-8-

Criminal No. 4:15-cr-0566-S1

LEE ROY VILLARREAL

8

**UNOPPOSED
GOVERNMENT'S MOTION TO DISMISS
COUNT FOUR OF THE FIRST SUPERSEDING INDICTMENT**

The United States of America (“Government”) files this motion to dismiss court four of the first superseding indictment:

L.

On November 21, 2019, a grand jury returned the first superseding indictment charging Lee Roy Villarreal (“Villarreal”) in count four with using, carrying and brandishing a firearm during a crime of violence, that is, kidnapping, in violation of Title 18, United States Code, § 924(c).

II.

The Supreme Court in Davis v. United States, 139 S. Ct. 2319, 204 L. Ed 2d 757 (2019) held that kidnapping is not a crime of violence under Title 18, United States Code, § 924(c)(3)(b). Therefore, kidnapping cannot be a predicate offense for a charge under Title 18, United States Code, § 924(c).

III.

The Government therefore moves for the Court to dismiss count four of the 1st superseding indictment.

Respectfully submitted,

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s/ Anibal J. Alaniz

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CERTIFICATE OF CONFERENCE

On January 7, 2021, the Government conferred with counsel for the defendant and the defendant is unopposed to this motion.

s/ Anibal J. Alaniz

Anibal J. Alaniz
Assistant United States Attorney

s/ Casey N. MacDonald

Casey N. MacDonald
Assistant United States Attorney

CERTIFICATE OF SERVICE

On January 8, 2021, the Government filed this motion via ECF and served counsel of record.

s/ *Anibal J. Alaniz*

Anibal J. Alaniz
Assistant United States Attorney

s/ *Casey N. MacDonald*

Casey N. MacDonald
Assistant United States Attorney